

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB MAY 26,99

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Smokey Mountain Chew, Inc.

Serial No. 75/117,428

William R. Gustavson of Sidley & Austin for Smokey Mountain
Chew, Inc.

Cynthia Tripi, Trademark Examining Attorney, Law Office 105
(Thomas G. Howell, Managing Attorney).

Before Simms, Hohein and Bucher, Administrative Trademark
Judges.

Opinion by Bucher, Administrative Trademark Judge:

Smokey Mountain Chew, Inc. filed an application for
registration of the mark "SMOKEY MOUNTAIN FLAVOR DROPS" for
"tobacco and non-tobacco snuff or chew products."¹

¹ Serial No. 75/117,428, in International Class 34, filed
June 1, 1996, based upon an allegation of a *bona fide* intention
to use the mark in commerce.

The Trademark Examining Attorney issued a final refusal to register based upon applicant's failure to comply with her requirements as to submitting a more definite identification of goods, submitting advertising or promotional materials, and agreeing to a disclaimer of any descriptive matter in the mark.

Applicant has appealed the final refusal to register. Briefs have been filed but applicant did not request an oral hearing. We affirm each of the requirements of the refusal to register.

The Trademark Examining Attorney takes the position that applicant's identification of goods:

...may refer to snuff or chewing tobacco as well as to *anything* used *with* snuff or chewing tobacco, such as snuff boxes (of precious metal or not), tobacco spittoons, tobacco flavoring, or tobacco pouches.
[emphasis in original]

(Trademark Examining Attorney's appeal brief, p. 5).

We find that the Trademark Examining Attorney has not abused her discretion in making this requirement. Applicant's present identification is not specific enough to ensure proper classification in this application. Furthermore, applicant's explanation that the "goods are products for snuff and chew" demonstrates the concerns of the Trademark Examining

Attorney that if this application should mature into a registration with this identification of goods, third parties will likely be unsure exactly what all may be encompassed by these "products."

With respect to the second issue, the Trademark Examining Attorney correctly cites to the authority of 37 C.F.R. §2.61(b) to help her examine this intent-to-use application. Trademark Rule of Practice 2.61(b) requires the applicant "to furnish such information and exhibits as may be reasonably necessary to the proper examination of the application." The Trademark Examining Attorney's request that applicant furnish corporate literature about the exact type of goods on which applicant intends to use this mark was clearly reasonable. Such materials from applicant would have better permitted her to work with applicant in coming up with a proper identification of goods, ensuring the proper international classification of the goods, and helping her to decide which part or parts, if any, of the composite mark, should be disclaimed. Again, we find that the Trademark Examining Attorney has not abused her discretion in making this requirement.

On the third issue, the Trademark Examining Attorney takes the position that inasmuch as applicant

has not cooperated with her earlier requirements for a specific identification of goods and corporate promotional materials, she cannot determine whether the words "flavor," or "drops" or both, are descriptive and/or generic as applied to applicant's goods. As the Trademark Examining Attorney noted, applicant has not "... addressed the propriety of the disclaimer requirement in its Response to the initial Office Action, nor raised the issue on appeal." As with the other two requirements herein, we find again that the Trademark Examining Attorney has not abused her discretion in making this requirement.

Decision: The refusal to register as to all three requirements is affirmed.

R. L. Simms

G. D. Hohein

D. E. Bucher

Administrative Trademark
Judges, Trademark Trial and
Appeal Board